Canada Industrial Relations Board Conseil canadien des relations industrielles

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# Reasons for Decision

Martin Léveillé,

*complainant,*

*and*

Canada Council of Teamsters;
Teamsters/Québec, Local 931,

*respondents,*

*and*

Purolator Courier Ltd.,

*employer.*

Board File: 28555-C
Neutral Citation: 2011 CIRB **616**
December 8, 2011

The Board was composed of Mr. Claude Roy, Vice-Chairperson, and Messrs. Daniel Charbonneau and Patrick J. Heinke, Members.

Section 16.1 of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code* ) provides that the Board may decide any matter before it without holding an oral hearing. Furthermore, the Board is not required to notify the parties of its intention not to hold a hearing (see *NAV CANADA*, 2000 CIRB 468, affirmed in *NAV Canada* v. *International Brotherhood of Electrical Workers*, 2001 FCA 30; and also *Raymond* v. *Canadian Union of Postal Workers*, 2003 FCA 418). In this matter, the

Board is satisfied that the documents on file and the parties' written submissions are sufficient for it to decide the matter without an oral hearing.

**Appearances**

Mr. Martin Léveillé, on his own behalf;

Mr. Pierre-André Blanchard, for the Canada Council of Teamsters and Teamsters/Québec, Local 931;

Mr. Charles Beaulieu, for Purolator Courier Ltd.

These reasons for decision were written by Mr. Claude Roy, Vice-Chairperson.

**I–Nature of the Application**

[1] Mr. Martin Léveillé (the complainant) filed a complaint with the Board on January 27, 2011, alleging that Teamsters/Québec, Local 931 (the union), acted in a manner that was arbitrary and in bad faith in handling his grievance and discriminated against him, in violation of section 37 of the *Code*.

**II–Facts and Circumstances**

[2] From August 17 to 20, 2010, Purolator Courier Ltd. (the employer) posted a job vacancy for an 113S Specialized Sorter for hazardous materials at its Boucherville depot. One of the six qualifications required for the position was "functional English."

[3] On August 31, 2010, with the assistance of a union representative, the complainant filed grievance no. B-41609 to challenge the requirement for English in the job posting, alleging that it was unfair and unreasonable. The employer received the grievance on September 1, 2010.

[4] On September 8, 2010, the labour-management labour relations committee held a meeting at which the complainant's grievance was discussed, and the employer explained why it required functional knowledge of English for the hazardous material specialist position.

[5] On September 21, 2010, the employer informed the union that it could not allow grievance no. B-41609 since the complainant was not qualified for the position. Moreover, the employer had twice offered to send the complainant on training so that he could meet the language requirements of the position, and the complainant had refused both times.

[6] On September 24, 2010, the union sent the employer a notice of intent to seek arbitration along with a request for further investigation with a view to obtaining a copy of the job posting in question, which the employer forwarded without delay.

[7] As part of its investigation, the union proceeded to verify the various information gathered at the September 8, 2010, labour relations committee meeting. Verification with the appropriate people involved confirmed the employer's explanations regarding the required qualification for the hazardous materials specialist position in major depots.

[8] On October 10, 2010, the complainant sent his version of the facts to the union, at the union's request. He appended documentation relating to Quebec's *Charter of the French Language* (R.S.Q., c. C-11), which prohibits an employer from making the obtaining of employment or a position dependent upon the knowledge of a language other than the official language, French, unless the nature of the duties requires such knowledge.

[9] The union carried on with its investigation, which confirmed that past and current incumbents of this hazardous materials specialist position at the Boucherville depot had functional knowledge of English.

[10] On October 22, 2010, the union's grievance committee discussed the complainant's grievance and decided to seek a legal opinion. According to the opinion it received on October 25, 2010, the union would have no chance of succeeding at arbitration.

[11] On October 26, 2010, the union informed the complainant of its decision not to take the grievance to arbitration by stating the following:

> After investigation, consideration and analysis of your grievance by the Grievance Committee, the union has concluded that it has no chance of succeeding at arbitration. Consequently, we are advising you that we are closing your grievance. More specifically, we have come to this conclusion for the following reason:
>
> Under section 46 of the Charter of French-language rights, the Employer has the right to require knowledge of English where it deems that the position requires such knowledge.
>
> (translation)

The employer was notified on the same date that the union was dropping the grievance in question.

[12] On January 13, 2011, the complainant filed a complaint against the union with Quebec's *Commission des relations du travail*, alleging a breach of its duty of representation under section 47.2 *et seq.* of Quebec's *Labour Code* (R.S.Q., c. C-27). The complaint was dated December 16, 2010.

[13] On January 17, 2011, Quebec's *Commission des relations du travail* informed the complainant that it did not have jurisdiction and that the complaint had to be dealt in accordance with the provisions of the *Canada Labour Code*, since the union was certified by the Board.

[14] On January 27, 2011, the complainant filed his duty of fair representation complaint with the Board pursuant to section 37 of the *Code*. The complaint was dated January 24, 2011.

**III–Positions of the Parties**

**A–The Complainant**

[15] The complainant criticizes the union for the fact that English is required for the position posted. He alleges that the union acted arbitrarily by not taking into account his complaint and the evidence he provided to show that English was not needed for the position in question. He alleges that the union acted in a discriminatory manner in relation to the official language of work in Quebec. He states that it acted in bad faith when it responded to his grievance in very short time frame without

giving any attention to his complaint or even considering all of the evidence he had provided and the names of witnesses he had given.

[16] Basically, the complainant submits that the employer did not have the right to require functional knowledge of English for the 113S Specialized Sorter position posted from August 17 to 20, 2010.

[17] The complainant states that the employer is preventing him from working in the official language of Quebec, French, and is thus violating section 46 of the *Charter of the French language*, especially since, in his opinion, no knowledge of English is required to perform the duties of the position posted.

[18] The complainant further states that there are two official languages in Canada, English and French, and that he has the right to work in French.

**B–The Union**

[19] First, the union alleges that there is a basic rule whereby a union is not required to refer a grievance to arbitration.

[20] Second, the union states that, in considering a complaint made under section 37 of the *Code* that alleges violation of the union's duty of fair representation, the Board must examine the decision-making process used by the union to arrive at its decision as to whether or not to pursue a grievance, rather than the merits of the grievance.

[21] The union refers to the principles set out by the Supreme Court of Canada in *Canadian Merchant Service Guild* v. *Gagnon et al.*, [1984] 1 S.C.R. 509, to support its submission regarding examining the union's conduct.

[22] The union states that it performed a complete and especially impartial investigation of the complainant's grievance. In its view, its actions in this matter show that it carefully investigated and analyzed the pertinent facts and law before taking a position. It also refers to the method of handling

grievances that it has developed over the years in order to avoid any violations of section 37 of the *Code*.

[23] According to the union, the Board must look to the principles set forth by the Supreme Court in the previously cited case and refrain from intervening if the union conducted a thorough investigation and considered the impact of its decision on the employee. It submits that the Board cannot substitute its own decision for the union's, thus acting as a court of appeal with respect to the union decision. Finally, it states that the role of the Board is to review not the merits of the union's decision, but rather the process it followed to arrive at its decision.

[24] Despite this argument, the union sets out the particulars of the investigation it conducted and the entire decision-making process it followed. It checked and determined that the employer's requirement was consistent for all of the positions at its major depots; it requires functional knowledge of English for any employee seeking a regular position as a hazardous material specialist.

[25] The union sought a legal opinion, which indicated that there was no chance of success at arbitration because Quebec's *Charter of the French language* does not apply to a company that falls under federal jurisdiction. Additionally, regardless of whether the analysis is carried out either in regard to the *Charter of the French language* or the collective agreement, the result is the same, as the requirement of functional knowledge of English is reasonable and certainly justified for the position in question.

[26] With respect to its obligations under section 37 of the *Code* and the Board's jurisprudence in that regard, the union concludes by pointing out that it used an objective and relevant investigation method that was completely free of any form of bad faith or arbitrariness. In the view of the union, the complaint must be dismissed as the union met its obligations.

**C–The Employer**

[27] The employer states that language of work is a condition of employment and, since it operates a federal business, it is not subject to the provisions of the *Charter of the French language*, namely,

sections 41 to 50 thereof. It refers the Board to the decision of Quebec's *Commission des relations du travail* in *Girard* c. *Telus Québec inc.*, 2006 QCCRT 236, dated May 5, 2005, which dealt with this issue.

[28] The employer also refers to its letter of September 21, 2010, in response to the complainant's grievance, in which it indicated that it had twice offered to send the complainant for the training needed to occupy the position, but he had refused both times. Consequently, he was not qualified for the job.

[29] The employer further states that the collective agreement does not recognize any right on the part of the union to a say in determining the requirements of positions. In its view, this is a management right.

**IV–Analysis and Decision**

**A–Union's Conduct**

[30] Section 37 of the *Code* reads as follows:

> 37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

[31] The complainant bears the onus of proof in a complaint alleging breach of this duty of fair representation (see *Richard Connolly et al.* (1998), 107 di 120; and 45 CLRBR (2d) 161 (CLRB no. 1235)). He is therefore required to prove that, on a balance of probabilities, the union violated its duty and to submit a comprehensive file in support of his allegations. In *McRae.Jackson*, 2004 CIRB 290, the Board stated the following in this regard:

> [13] In a complaint under section 37, the employee bears the onus (or burden of proof) of presenting evidence that is sufficient to raise a presumption that the union has failed to meet its duty of fair representation. The burden of proof is also described as the requirement to establish a *prima facie* case, or said differently, the requirement to bring forward sufficient relevant facts to establish a violation of the *Code*. The union is entitled to rebut the complainant's allegations (see *Terry Griffiths*, [2002] CIRB no. 208; and 89 CLRBR (2d) 135).

[32] As submitted by the union, the Board has ruled on a number of occasions that a union's conduct must be considered on the basis of the principles set out by the Supreme Court of Canada in *Canadian Merchant Service Guild* v. *Gagnon et al.*, *supra*, which are summarized as follows:

> The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.
>
> 1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
>
> 2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
>
> 3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.
>
> 4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.
>
> 5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.
>
> (page 527)

[33] Additionally, the Board has previously held that it does not second-guess decisions made in a reasonable manner by a union and that a section 37 complaint cannot serve as an appeal of the union's decision. The purpose of this section is to ensure that the Board analyzes the union's conduct and that it rules on the union's decision-making process and not the merits of its decision (see *McRae.Jackson*, *supra*; *Blacklock*, 2001 CIRB 139; *Misiura*, 2000 CIRB 63; *Anthony William Amor* (1987), 70 di 98; and 18 CLRBR (NS) 249 (CLRB no. 633); and *Coulombe*, 1999 CIRB 25).

[34] The complainant alleges that the union acted in a manner that was arbitrary, discriminatory and in bad faith. In *McRae.Jackson*, *supra*, the Board stated the following in this regard:

> [27] A union must not act in bad faith; that is, with improper purpose. Three examples of this conduct include: the personal feelings of union officers influencing whether or not a grievance should be pursued; conspiring with the employer to have an employee disciplined or terminated; or, putting the ambitions of a group of employees who support a union official ahead of the interests of an individual employee.

[28] A union must not discriminate on the basis of age, race, religion, sex or medical condition. Each member must receive individual treatment and only relevant and lawful matters must influence whether or not a grievance is referred to arbitration. It should be noted that not every instance of differential treatment is considered discrimination. For example, to refer one employee's grievance to arbitration and not another where there are relevant considerations to support the distinction is not discriminatory. Nor is an agreement with the employer to give different or better working conditions to a group of employees because of workplace considerations (see *Mario Soulière et al.*, [2002] CIRB no. 205; and 94 CLRBR (2d) 307).

[29] A union must not act arbitrarily. Arbitrariness refers to actions of the union that have no objective or reasonable explanation, that put blind trust in the employer's arguments or that fail to determine whether the issues raised by its members have a factual or legal basis (see *John Presseault, supra*, but see *Orna MonicaSheobaran*, [1999] CIRB no. 10, that upheld a complaint where the union referred an employee to the employer rather than assist the employee; and *Clive Winston Henderson, supra*, where the union's decision jeopardized an employee's seniority).

[30] It is arbitrary to only superficially consider the facts or merits of a case. It is arbitrary to decide without concern for the employee's legitimate interests. It is arbitrary not to investigate and discover the circumstances surrounding the grievance. Failure to make a reasonable assessment of the case may amount to arbitrary conduct by the union (see *Nicholas Mikedis* (1995), 98 di 72 (CLRB no. 1126), appeal to F.C.A. dismissed in *Seafarers' International Union of Canada* v. *Nicholas Mikedis et al.*, judgment rendered from the bench, no. A-461-95, January 11, 1996 (F.C.A.)). A non-caring attitude towards the employee's interests may be considered arbitrary conduct (see *Vergel Bugay et al., supra*) as may be gross negligence and reckless disregard for the employee's interests (see *William Campbell*, [1999] CIRB no. 8).

[35] In that matter, the Board summed up the obligations of a union in regard to a complaint alleging violation of section 37 of the *Code* as follows:

[37] Accordingly, the Board will normally find that the union has fulfilled its duty of fair representation responsibility if: a) it investigated the grievance, obtained full details of the case, including the employee's side of the story; b) it put its mind to the merits of the claim; c) it made a reasoned judgment about the outcome of the grievance; and d) it advised the employee of the reasons for its decision not to pursue the grievance or refer it to arbitration.

[36] The union was careful to seek a legal opinion regarding the language requirement, since the complainant had raised this matter. The Board is not bound by legal opinions, but it does take this fact into account in analyzing the union's decision-making process. In *McRae.Jackson, supra*, it stated the following:

[38] Established unions usually have their own experienced staff to conduct investigations, assess the grievance and decide whether or not to pursue a grievance. Although the union may decide to obtain the advice of legal counsel, there is no requirement for the union to obtain a legal opinion before deciding not to refer a grievance to arbitration. The Board will not uphold a complaint based on the mere fact that the union did not obtain legal advice before deciding not to refer a grievance to arbitration, or that the union did not follow counsel's advice.

[37] In *M.G.*, 2007 CIRB 399, the Board also wrote the following concerning legal opinions sought by unions:

> [160] As workplace issues have become more complex, more and more unions are engaging counsel to provide guidance in their decision of whether or not to refer a grievance to arbitration. Counsel is usually in a better position to provide an opinion from decided cases as to whether a grievance is likely to be successful at arbitration. The Board has generally been deferential to the union's reliance on their counsel's opinion (see *John Presseault*, [2001] CIRB no. 138; *David H. McCormick*, October 18, 2006 (CIRB LD 1507); and *Virginia McRae Jackson et al.*, *supra*). However, in *James H. Rousseau* (1995), 98 di 80; and 95 CLLC 220-064 (CLRB no. 1127), the Board cautioned that the use of a lawyer does not serve as an absolute defence to a section 37 complaint. In reversing that decision on reconsideration (see *James H. Rousseau* (1996), 102 di 17; and 97 CLLC 220-007 (CLRB no. 1173)), the Board stated nonetheless that it was not its role to microscopically review the quality of the union representation of an employee, except in very unusual circumstances.

[38] The union explained to the Board that, over the years, it has developed a method of handling grievances that has the advantage of eliminating all forms of arbitrariness, discrimination or bad faith in handling non-disciplinary cases, and the method has been modified to adapt it to individual disciplinary cases. That method, as set out in union counsel's letter of March 10, 2011, is as follows:

> 1. Initiation of investigation as soon as grievance is filed;
> 2. Whenever possible, prompt analysis of grievance by labour-management grievance committee to gather some preliminary information and try to resolve the matter;
> 3. Investigation by the person responsible within the Union;
> 4. Discussion of grievance by the labour-management grievance committee if necessary;
> 5. Depending on the result of step 4, analysis of grievance by the union's grievance committee and decision (proceed to arbitration or not, continue investigation or seek legal opinion);
> 6. Grievance is dealt with in accordance with the decision at step 5; if investigation is to continue, grievance reverts to step 5 upon completion of the investigation; if grievance is referred for a legal opinion, the union and representative must comply with requests and recommendations;
> 7. Notice of decision to the employer and the complainant.
>
> (translation)

[39] The Board notes that the union followed this method in handling the complainant's grievance and that its decision not to take the grievance to arbitration was a reasoned and legally sound one. That decision in no way violates section 37 of the *Code* and the complainant failed to discharge the onus on him to prove a breach of the duty of representation on the part of his union. For this reason and for the two reasons set out below, the complaint must be dismissed.

**B–Violation of Quebec's *Charter of the French language***

[40] The complainant alleges that the employer is violating his right to work in French in Quebec and is not complying with section 46 of the *Charter of the French language*:

> 46. An employer is prohibited from making the obtaining of an employment or office dependent upon the knowledge or a specific level of knowledge of a language other than the official language, unless the nature of the duties requires such knowledge.

[41] The union investigated and concluded that the requirements for the posted position were reasonable and that the prerogative of determining the required qualifications for the position fell within the employer's management rights. The union's investigation in this regard was complete and the Board need not rule on the matter or substitute its opinion for that of the union.

[42] However, the Board wishes to remind the parties that the employer carries on activities that fall under federal jurisdiction and the union was certified by the Board to represent the employees in the bargaining unit to which the complainant belongs. Further, in article 2.01 of the collective agreement in effect, the employer recognizes the union as the sole and exclusive bargaining agent for the employees and owner-operators covered by the bargaining certificate issued by the Canada Labour Relations Board on February 2, 1995 (no. 6615-U), which was amended by the order dated June 26, 2003 (no. 8480-U).

[43] Section 3(1) of the *Code* defines "collective agreement" as follows:

> 3.(1) In this Part,
>
> ...
>
> "collective agreement" means an agreement in writing entered into between an employer and a bargaining agent containing provisions respecting terms and conditions of employment and related matters.

[44] The employer and the union determined that the purpose of the collective agreement was as follows:

> **ARTICLE–PREAMBLE**
> **1.01 Purpose**

> The purpose of this collective agreement is to establish orderly relations between the parties, to set the wage rates, the hours of work and the other working conditions for the employees, as well as to promote good relations and a climate of cooperation between the company and its employees represented by the union.
>
> (page 4; translation)

[45] Under the management rights recognized in article 3 of the collective agreement, the employer has the right to determine the working conditions and requirements for a position:

> **ARTICLE 3–MANAGEMENT RIGHTS**
>
> **3.01 Recognized Right**
>
> The union recognizes the exclusive right of the company to operate its facilities, machinery and equipment and to manage its undertaking as it sees fit, subject only to the restrictions imposed by law or by the provisions of the this collective agreement.
> Without limiting the generality of the foregoing, the union recognizes that it is the company's right:
>
> a) to administer its undertaking, including the right to study and introduce new methods of work, to increase or reduce its personnel, as well as to modify its route structure and schedules of work;
> b) to demote, discharge, reprimand, suspend and discipline for just cause;
> c) to maintain order, discipline, productivity and performance;
> d) to hire or to transfer.
> In the exercise of its management rights, the company must comply with the provisions of this agreement and the foregoing paragraphs shall not deprive employees or the union of the right to have recourse to the grievance and arbitration procedure provided for in this agreement.
>
> (pages 4 and 5; translation)

[46] Language of work is considered a condition of employment; a company that falls under federal jurisdiction is not subject to the *Charter of the French language*. In this regard, the employer referred the Board to the May 5, 2005, decision of Quebec's *Commission des relations du travail* in *Girard* c. *Telus Québec inc.*, *supra*. In that matter, the Commission cited an excerpt from a decision rendered by a member in 1983, in *Pierrette Côté* c. *Banque de Montréal* (file no. M-17776-05, case CLF-83-02-M-002, June 27, 1983), in which the member affirmed that the *Charter of the French language* could not apply to a chartered bank, since it fell under federal jurisdiction, and that language of work was a condition of employment, which "is a labour relations matter under federal legislation" (translation).

[47] In that May 5, 2005, decision, the *Commission des relations du travail* stated the following:

[7] This certification issued by the Canadian Industrial Relations Board is a strong sign that labour relations in the field of telecommunications come under exclusive federal jurisdiction pursuant to sections 92(10) and 91(29) of the *British North America Act*.

[8] In a matter similar to this one where the employer was a chartered bank *(Pierrette Côté et Banque de Montréal*, file no.M-17776-05, case CLF-83-02- M-002, June 27, 1983), Member Jean-Pierre Tremblay stated the following:

"... Indeed, and the evidence shows this, the respondent is a chartered bank and falls under federal jurisdiction pursuant to section 91(15) of the BNA Act. In *Commission du salaire minimum* v. *The Bell Telephone Company of Canada* (1966) (S.C.R. 767), the Supreme Court ruled that determining such matters as hours of work, wage rates, working conditions and so on was an essential part of the management and operation of any commercial or industrial undertaking. Under the circumstances, regulation of the field of employer-employee relations in an undertaking of this nature (the Bell Telephone Company in this instance) became a "matter" that fell within the class of subjects enumerated in section 92(10)(*a*) of the *British North America Act* and, consequently, under the exclusive legislative jurisdiction of the Parliament of Canada. In the case before us, the same conclusions must be made except that, as a chartered bank, the respondent is governed not by section 92(10)(*c*), but by section 91(15) of the BNA Act. It might be possible to claim that language of work is not a working condition and that, consequently, sections 45 *et seq.* of the *Charter of the French language* could apply to the respondent. However, there is no way around the provisions of section 50 of the *Charter of the French language*, which states that "(s)ections 41 to 49 of this Act are deemed an integral part of every collective agreement." And according to section 62 of the *Labour Code*, "(t)he collective agreement may contain any provision respecting conditions of employment which is not contrary to public order or prohibited by law." Obviously, language of work is a condition of employment and, in the matter under review, is a labour relations matter under federal legislation...."

[9] In this case this means that Telus Québec Inc. falls under federal jurisdiction pursuant to sections 92(10)(*a*) and 91(29) of *The Constitution Act, 1867*.

[10] It is for this reason that, under the circumstances, the Canada Industrial Relations Board intervened to, among other things, modify the bargaining units and decreed that the provisions relating to the labour agreements be maintained.

[11] This also means that language of work is a condition of employment and, in this case, consideration of complaints in this regard is a labour relations matter under federal legislation.

(*Girard* c. *Telus Québec inc.*, *supra*; translation)

[48] The Board shares this view and finds that the union did not breach its duty of fair representation in concluding that the employer had the right to include functional knowledge of English in the job posting at issue. There was nothing discriminatory in this decision by the union, especially since the undertaking comes under federal jurisdiction and is not subject to the provisions of the *Charter of the French language*.

[49] With regard to the complainant's argument concerning his right to work in French, pursuant to the *Official Languages Act*, the Board points out that the purpose of that Act is to ensure respect of

French and English as official languages in their use in federal institutions, as set out in sections 2 and 3 therein:

> 2. The purpose of this Act is to
>
> (*a*) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;
>
> (*b*) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and
>
> (*c*) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.
>
> ...
>
> 3.(1) In this Act,
>
> ...
>
> "federal institution" includes any of the following institutions of the Parliament or government of Canada:
>
> (*a*) the Senate,
>
> (*b*) the House of Commons,
>
> (*c*) the Library of Parliament,
>
> (*c.1*) the office of the Senate Ethics Officer and the office of the Conflict of Interest and Ethics Commissioner,
>
> (*d*) any federal court,
>
> (e) any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an Act of Parliament or by or under the authority of the Governor in Council,
>
> (*f*) a department of the Government of Canada,
>
> (*g*) a Crown corporation established by or pursuant to an Act of Parliament, and
>
> (*h*) any other body that is specified by an Act of Parliament to be an agent of Her Majesty in right of Canada or to be subject to the direction of the Governor in Council or a minister of the Crown,
>
> but does not include
>
> (*l*) any institution of the Council or government of the Northwest Territories or of the Legislative Assembly or government of Yukon or Nunavut, or
>
> (*j*) any Indian band, band council or other body established to perform a governmental function in relation to an Indian band or other group of aboriginal people;

[50] Additionally, section 34 of that Act also states that English and French are the languages of work, but for federal institutions only:

> 34. English and French are the languages of work in all federal institutions, and officers and employees of all federal institutions have the right to use either official language in accordance with this Part.

[51] Consequently, the Board cannot accept the complainant's argument concerning his right to work in French pursuant to the *Official Languages Act*, as the provisions of that Act apply only to federal institutions, as set out in the corresponding definition, and not to commercial undertakings, even if they come under federal jurisdiction.

**C–Timing of the Complaint**

[52] Although neither the union nor the employer raised the issue of the timeliness of the filing of the complaint, the Board wishes to point out that, over and above the reasons already given, this complaint would have been dismissed because it was filed outside the 90-day time limit provided for under section 97(2) of the *Code*, which states the following:

> 97.(2) Subject to subsections (4) and (5), a complaint pursuant to subsection (1) must be made to the Board not later than ninety days after the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

[53] The complainant filed his complaint with the Board on the 93rd day following the union's decision, of which he learned on October 26, 2010, as indicated in the complaint. The fact of having filed an initial complaint with Quebec's *Commission des relations du travail* on January 13, 2011, does not excuse his late filing of his complaint with the Board. The Board has already ruled on this issue in *Porter*, 2002 CIRB 176:

> [13] The issue of timeliness of this complaint is twofold. The first question is whether Mr. Porter's error in filing his original complaint in the wrong venue suspends the delay in filing his complaint before the CIRB. If not, the second question is whether the Board should exercise its discretion to relieve the complainant of his untimeliness.
>
> ...
>
> [18] In light of the above jurisprudence, the limitation period under the *Code* has not been suspended if a complaint is filed in the wrong forum. In the instant case, even if the Board were to give the benefit of

> the doubt to the complainant that he was not informed of the union's decision not to pursue his grievances until December 13, 2000, and go so far as to accept that the filing of his complaint before the OLRB suspended the time limits in his case before the CLRB, Mr. Porter's complaint, even as it relates to the OLRB, is outside the 90-day time filing period under section 97(2) of the *Code*, and therefore, clearly untimely.

[54] Section 16(*m*.1) of the *Code* allows the Board to extend the 90-day time limit, but only in exceptional circumstances (see *Pinel*, 1999 CIRB 19; *Porter*, *supra*; and *Verreault*, 2000 CIRB 92, and 69 CLRBR(2d) 154). The complainant provided no sound reason for his failure to file his complaint in a timely fashion. Quebec's *Commission des relations du travail* responded to his complaint on January 17, 2011, at which time it was not too late for the complainant to file his complaint within the time limit provided for under the *Code*. The Board therefore has no reason for extending the time limit for filing the complaint.

**V–Conclusion**

[55] For all of these reasons, the complainant's complaint is dismissed.

[56] This is a unanimous decision of the Board.

***Certified Translation***
***Communications***

Claude Roy
Vice-Chairperson

Daniel Charbonneau
Member

Patrick J. Heinke
Member